IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No. 441 of 2000.

Judgement reserved on: 20.12.2007

Date of decision: 24.12.2007 .

State of H.P. .....Appellant

Vs.

Jagat Ram & Ors. .... Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant : Mr. M.L. Chauhan, Addl. Advocate General.

For the Respondents : None

Kuldip Singh, Judge.

The acquittal of respondents under Sections 353, 332, read with Section 34 IPC recorded on 24.3.2000 in Criminal Case No 197/2 of 1996 by learned Sub Divisional Judicial Magistrate, Nalagarh has been assailed by way of this appeal by the State.

2. The prosecution case in brief is that PW-1 Roshan Lal on 25.5.1996 was driving bus bearing registration No.HP-12-3543, at place near Katal at about 5.30 p.m. some passengers got down from the bus. Two passengers went to the driver side and started beating him. Two persons tried to drag the driver out of the

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Whether the reporters of the local papers may be allowed to see the Judgment? Yes

bus who suffered injuries. The matter was reported to the police and FIR Ex.PW-2/A came to be registered. PW-10 Govind Ram conducted the investigation. Roshan Lal was medically examined by PW-7 Dr. N.K. Gupta, who issued MLC Ex.PW-7/C. After completion of investigation challan was put up in the Court and respondents were charged under Sections 353, 332 read with Section 34 IPC, they pleaded not guilty and claimed trial. The prosecution examined 10 witnesses. The statements of respondents were recorded under Section 313 Cr.P.C., they denied the prosecution case. The case of the respondents is that PW-1 Roshan Lal wanted to marry his daughter with the son of respondent No.1 Jagat Ram, who refused and their relations were strained for this reason. The bus was stopped and the passengers were asking the driver to drive the bus but driver refused which caused some altercation between the passengers and the driver. The respondents examined DW-1 Surjan Singh in defence. The learned Sub Divisional Judicial Magistrate acquitted the respondents, hence this appeal.

4. I have heard learned Addl. Advocate General for the State and gone through the record. It has been submitted on behalf of the State that prosecution has proved the case against the respondents beyond reasonable doubt. The learned Sub Divisional Judicial Magistrate has not properly appreciated the material on record. The respondents have committed offence for which they have been charged. None appeared on behalf of the respondents.

5. In FIR Ex.PW-2/A assailants have not been named. The FIR was lodged by PW-2 conductor of the bus. At least respondent No.1 Jagat Ram and respondent No.2 Lal Chand were known to PW-1 Roshan Lal. The absence of names of respondents in FIR is significant and prosecution case is to be appreciated in the light of this important fact.

6. PW-1 Roshan Lal driver of the bus has stated that at place Katal khad respondents Lal Chand, Jagat Ram, Joginder Singh and Jagroop Singh boarded the bus. The respondents Jagroop and Lal Chand came towards him, from driver side window respondents Joginder Singh and Jagat Ram came inside the bus and gave him beatings with fist and kick blows. On his raising alarm Jagdish, 3-4 passengers and conductor came from other side. He received several injuries and the buttons of the clothes which he was wearing were also broken. The bus was stopped after about 150 feet. They continued to give him beatings even after the bus was stopped. The passengers tried to intervene and saved him, he was on duty. He was medically examined. He produced his jacket before the police vide memo Ex.PW-1/A. In cross-examination he has stated that for about 10 minutes fight continued in the bus, two persons after boarding the bus gave beatings and Jagat Ram pulled him out from the bus. The bus was over loaded. Rattan conductor went to bring the police. The police recorded his statement. Clothes were stained with blood. He received scratches on the neck. At the time of lodging the report by the conductor he told the names of Lal

Chand and Jagat Ram but did not tell the names of other respondents. The respondents gave him beatings when the bus was moving.

7. PW-2 Ratttan Singh conductor of the bus has stated that the bus reached Katal khad at bout 5.30 p.m. He heard the noise of **Mar Dia Mar Dia** near driver seat**.** He jumped from the running bus. The respondents were beating Roshan Lal, two accused were inside and one was out side. He reported the matter to the police vide FIR Ex.PW-2/A . The respondents Joginder Singh and Jagroop Singh boarded the bus whereas Lal Chand and Jagat Ram were giving beatings from out side the bus.

8. PW-3 Chaman Lal has stated that he was travelling in the bus and was sitting at seat No. 2. Respondents Joginder and Jagat Ram boarded the bus from front door. They were pushing out the driver and two respondents were pulling out the driver from the driver seat. The passengers saved the driver from beatings. In cross-examination he has stated only two accused entered the bus and caught hold the driver from the legs. The clothes of the driver were stained with blood. PW-4 Chaman Lal son of Bagwan Dass did not support the prosecution and was declared hostile. PW-5 Sohan Lal has stated that he was travelling in the bus and from driver side Lal Chand, Joginder and Jagroop caught hold Roshan Lal and slapped him. Jagat Ram was also standing there. He does not know what happened. PW-6 Dila Ram has stated that he had disclosed the names of the accused to the police. He has stated that respondents

slapped Roshan Lal and he along with other passengers saved Roshan Lal. He has also stated that he gave his ticket to the police but no such ticket was produced during trial. There is nothing on record to show that PW-6 earlier knew the respondents, therefore his identification of the respondents in absence of prior identification cannot be safely relied. PW-7 Dr. N.K. Gupta examined Roshan Lal and issued MLC Ex.PW-7/C and found five injuries on his person. According to him all injuries were simple and within 6 hours duration. In cross-examination he has stated that the injuries could be caused by fall on stony surface and hard ground. DW-1 Surjan Singh has stated that on 25.5.1996 he travelled in the bus and got down at Katal. There was some altercation between driver and passengers and passengers were alleging that driver has intentionally stopped the bus. The passengers were pulling out the driver.

9. PW-1 Roshan Lal has stated that he disclosed the names of Jagat Ram and Lal Chand to the conductor but no such names are mentioned in FIR Ex.PW-2/A which was recorded at the instance of PW-2 Rattan Singh. PW-1 has stated that Jagroop and Lal Chand came towards him after boarding the bus at Katal khad, Joginder Singh and Jagat Ram came inside the bus from driver side window. All respondents gave him beatings. This has been contradicted by PW-2, he has stated that Joginder Singh and Jagroop Singh boarded the bus whereas Lal Chand and Jagat Ram were giving beatings from out side the bus. PW-3 Chaman Lal has further stated that Joginder and Jagat Ram boarded the bus from front door

and other two respondents were pulling out the driver from driver seat. PW-4 did not support the prosecution case. PW-5 has stated that Lal Chand, Joginder, Jagroop slapped Roshan Lal and Jagat Ram was also standing there, he does not know what happened. Thus prosecution witnesses on material points have contradicted the prosecution story.

10. There is no explanation why respondents-accused were not named in FIR Ex.PW-2/A, more particularly when it is the case of the prosecution that PW-1 was aware of the names of the respondents No.1,2 and he disclosed these names to PW-2 before registration of FIR. In log book Ex.PW-9/C recorded by PW-1 on 26.5.1996 he has not named any person for giving beatings to him on 25.5.1996 though he has mentioned about beatings. In Ex.PW-2/A there is no mention that PW-2 does not know the names of all the accused, though he has stated in FIR that he does not know the names of two persons who boarded the bus and gave beatings to Roshan Lal inside the bus, but this part of the statement of PW-2 is not reliable in as much as PW-1 has stated that when conductor went to lodge the report he disclosed the names of Jagat Ram and Lal Chand to the conductor and told him that the other respondents-accused are their nephews. It is thus clear that as per PW-1, PW-2 was aware of the names of at least Jagat Ram and Lal Chand respondents before lodging the FIR but he did not give their names in the FIR.

11. The identification parade was not conducted in the present case. The learned Sub Divisional Judicial Magistrate has recorded a finding that no doubt there is evidence on record that PW-1 Roshan Lal was given beatings when he was on duty but identity of the respondents-accused for giving beatings to PW-1 has not been established. The learned Sub Divisional Judicial Magistrate has rightly recorded finding that the identification of the accused persons has not been established. The trial Magistrate has closely scrutinized the evidence on record and has come to a possible view on the basis of material on record. The prosecution has failed to prove case against the respondents. No case of interference is made out. The appeal is accordingly dismissed.

(Kuldip Singh)
Judge.

December 24, 2007
(sks)